

Introduced by Senator Poochigian

February 17, 2005

An act to amend Section 186.22 of the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Poochigian. Street gangs.

Existing law, as amended by initiative, provides that, subject to exceptions, any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, *received additional varying terms of imprisonment, including*, for a conviction punishable by imprisonment for life, not be eligible for parole until 15 years imprisonment has been served. Existing law provides that these provisions may be amended by the Legislature with a $\frac{2}{3}$ vote of each house of the Legislature.

~~This bill would delete the requirement that for a conviction punishable by imprisonment for life, the person would not be eligible for parole until 15 years imprisonment had been served. provided that the defendant be subject to the penalty providing the longest term of imprisonment available among the various additional terms of imprisonment, as specified.~~

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its

1 choice of sentencing enhancements on the record at the time of
2 the sentencing.

3 (4) Any person who is convicted of a felony enumerated in
4 this paragraph committed for the benefit of, at the direction of, or
5 in association with any criminal street gang, with the specific
6 intent to promote, further, or assist in any criminal conduct by
7 gang members, shall, upon conviction of that felony, be
8 sentenced to an indeterminate term of life imprisonment with a
9 minimum term of the indeterminate sentence calculated as the
10 greater of:

11 (A) The term determined by the court pursuant to Section
12 1170 for the underlying conviction, including any enhancement
13 applicable under Chapter 4.5 (commencing with Section 1170) of
14 Title 7 of Part 2, or any period prescribed by Section 3046, if the
15 felony is any of the offenses enumerated in subparagraphs (B) or
16 (C) of this paragraph.

17 (B) Imprisonment in the state prison for 15 years, if the felony
18 is a home invasion robbery, in violation of subparagraph (A) of
19 paragraph (1) of subdivision (a) of Section 213; carjacking, as
20 defined in Section 215; a felony violation of Section 246; or a
21 violation of Section 12022.55.

22 (C) Imprisonment in the state prison for seven years, if the
23 felony is extortion, as defined in Section 519; or threats to
24 victims and witnesses, as defined in Section 136.1.

25 (5) (A) *Except as provided in paragraph (4) and in*
26 *subparagraph (B), any person who violates this subdivision in*
27 *the commission of a felony punishable by imprisonment in the*
28 *state prison for life, shall not be paroled until a minimum of 15*
29 *calendar years have been served.*

30 (B) *For any felony described in subparagraph (A), the*
31 *punishment provided in paragraph (1) of this subdivision shall*
32 *apply instead of the punishment provided in subparagraph (A) if*
33 *the punishment provided in paragraph (1) would result in a*
34 *longer term of imprisonment than the punishment provided in*
35 *subparagraph (A).*

36 (c) If the court grants probation or suspends the execution of
37 sentence imposed upon the defendant for a violation of
38 subdivision (a), or in cases involving a true finding of the
39 enhancement enumerated in subdivision (b), the court shall

1 require that the defendant serve a minimum of 180 days in a
2 county jail as a condition thereof.

3 (d) Any person who is convicted of a public offense
4 punishable as a felony or a misdemeanor, which is committed for
5 the benefit of, at the direction of or in association with, any
6 criminal street gang with the specific intent to promote, further,
7 or assist in any criminal conduct by gang members, shall be
8 punished by imprisonment in the county jail not to exceed one
9 year, or by imprisonment in the state prison for one, two, or three
10 years, provided that any person sentenced to imprisonment in the
11 county jail shall be imprisoned for a period not to exceed one
12 year, but not less than 180 days, and shall not be eligible for
13 release upon completion of sentence, parole, or any other basis,
14 until he or she has served 180 days. If the court grants probation
15 or suspends the execution of sentence imposed upon the
16 defendant, it shall require as a condition thereof that the
17 defendant serve 180 days in a county jail.

18 (e) As used in this chapter, “pattern of criminal gang activity”
19 means the commission of, attempted commission of, conspiracy
20 to commit, or solicitation of, sustained juvenile petition for, or
21 conviction of two or more of the following offenses, provided at
22 least one of these offenses occurred after the effective date of this
23 chapter and the last of those offenses occurred within three years
24 after a prior offense, and the offenses were committed on
25 separate occasions, or by two or more persons:

26 (1) Assault with a deadly weapon or by means of force likely
27 to produce great bodily injury, as defined in Section 245.

28 (2) Robbery, as defined in Chapter 4 (commencing with
29 Section 211) of Title 8 of Part 1.

30 (3) Unlawful homicide or manslaughter, as defined in Chapter
31 1 (commencing with Section 187) of Title 8 of Part 1.

32 (4) The sale, possession for sale, transportation, manufacture,
33 offer for sale, or offer to manufacture controlled substances as
34 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
35 the Health and Safety Code.

36 (5) Shooting at an inhabited dwelling or occupied motor
37 vehicle, as defined in Section 246.

38 (6) Discharging or permitting the discharge of a firearm from
39 a motor vehicle, as defined in subdivisions (a) and (b) of Section
40 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Money laundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(f) As used in this chapter, “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice

1 would best be served, if the court specifies on the record and
2 enters into the minutes the circumstances indicating that the
3 interests of justice would best be served by that disposition.

4 (h) Notwithstanding any other provision of law, for each
5 person committed to the Youth Authority for a conviction
6 pursuant to subdivision (a) or (b) of this section, the offense shall
7 be deemed one for which the state shall pay the rate of 100
8 percent of the per capita institutional cost of the Department of
9 Youth Authority, pursuant to Section 912.5 of the Welfare and
10 Institutions Code.

11 (i) In order to secure a conviction, or sustain a juvenile
12 petition, pursuant to subdivision (a), it is not necessary for the
13 prosecution to prove that the person devotes all, or a substantial
14 part of his or her time or efforts to the criminal street gang, nor is
15 it necessary to prove that the person is a member of the criminal
16 street gang. Active participation in the criminal street gang is all
17 that is required.